

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

SQUARE ONE FUND LTD.,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04330 (CGM)

MOTION FOR THE ISSUANCE OF LETTER OF REQUEST

1. Irving H. Picard (the “Trustee”), trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act (“SIPA”), substantively consolidated with the chapter 7 estate of Bernard L. Madoff, through the Trustee’s attorneys, Baker & Hostetler LLP, respectfully submits this Motion for the Issuance of a Letter of Request for International Judicial Assistance to the judicial authorities of Switzerland for the examination of Mr. Albert Collette, a resident of Vaud, Switzerland.

2. This application is made pursuant to 28 U.S.C. § 1781, this Court’s inherent authority, and in light of the comity between the United States and Switzerland. Service will be effected pursuant to the *Hague Convention of 18 March 1970 of the Taking of Evidence Abroad in Civil or Commercial Matters*, to which the United States and Switzerland are signatories.

3. Mr. Collette is a foreign citizen and a non-party. Thus, the Letter of Request provides the only means of compelling testimony from him.

FACTUAL BACKGROUND

Madoff’s Ponzi Scheme and Square One’s Connection to BLMIS

4. Madoff, through the investment advisory business of BLMIS, conducted a decades-long Ponzi scheme of breathtaking scale. (*See* Trustee’s Amended Complaint filed on December 21, 2018, ¶ 39 (ECF No. 167).)

5. Square One Fund Ltd. (“Square One”) is a British Virgin Islands investment fund that invested exclusively with BLMIS from approximately December 1998 until December 2008. (*Id.* ¶¶ 2–3, 63–64.)

6. In the two years preceding BLMIS’s collapse, Square One received \$6,410,000 in fraudulent transfers from BLMIS. (*Id.* ¶ 187.)

7. Square One received these transfers without “good faith” because it either knew or consciously avoided knowing that BLMIS’s investment advisory business was a fraud. (*Id.* ¶¶ 7–16, 126–28, 149, 182.)

8. Luc Estenne created Square One and served as its director and manager. Mr. Estenne continues to serve in these capacities to this day. (*Id.* ¶¶ 4, 71–73.)

9. While running Square One, Mr. Estenne also ran a highly successful investment advisory firm, Partners Advisers S.A. (“Partners Advisers”), in Geneva, Switzerland. (*Id.* ¶ 5.)

10. Partners Advisers tracked and analyzed BLMIS's purported investment returns over a ten-year period, culminating in an analytical study (the "Estenne Study") conducted by Mr. Estenne and Square One in 1999. (*Id.* ¶ 100.)

11. The Estenne Study confirmed that BLMIS's returns were implausible and had little to no correlation with BLMIS's purported investment strategy. (*Id.* ¶¶ 102–11, 116–19.)

12. In or around 2003, Partners Advisers alerted Mr. Estenne to several red flags of fraud concerning BLMIS's operations. (*Id.* ¶¶ 149–57.)

13. As a result of this warning and other indicia of fraud, Mr. Estenne redeemed his personal investments in Square One and advised certain others close to him to do the same. (*Id.* ¶¶ 163–65.)

14. Nevertheless, Mr. Estenne continued to direct Square One to solicit investments from other investors while taking fees off the top of those investments. (*Id.* ¶ 167.)

15. Mr. Estenne also took steps to ensure that neither Square One nor BLMIS would be subject to any due diligence reviews by Square One's investment manager or Partners Advisers. (*Id.* ¶ 169–71.)

Mr. Collette Has Relevant Knowledge

16. The Trustee's ongoing investigation has uncovered that Mr. Collette may have personal knowledge concerning the Trustee's allegations that Square One knew or consciously avoided knowing that BLMIS's investment advisory business was a fraud.

17. Specifically, the Trustee's investigation has uncovered that Mr. Collette met with Jérôme Müller, a diligence officer at Partners Advisers, in or around 2003. Mr. Müller was Partners Advisers' due diligence officer who the Trustee alleges warned Estenne about red flags of fraud concerning BLMIS's operations.

18. In or around 2003, Mr. Müller told Mr. Collette that he was “strongly convinced” that Madoff was “uninvestable” because of due diligence issues. This conversation between Mr. Collette and Mr. Müller comports with the Trustee’s allegations that Mr. Müller warned Estenne about Madoff during the same time period.

19. The Trustee believes that Mr. Collette’s testimony will enable him to prove that Mr. Müller warned Mr. Estenne of potential fraud at BLMIS.

20. This Letter of Request is part of the Trustee’s efforts to obtain testimony regarding Square One’s knowledge of fraud at BLMIS. The testimony sought is directly relevant to the Trustee’s allegations in the ongoing proceedings and is intended for use at trial to support the Trustee’s claims to avoid and recover fraudulent transfers to Square One. This evidence is essential for the Trustee to fulfill his statutory mandate to maximize recovery of customer property for the ultimate benefit of all of Madoff’s defrauded victims.

21. For the above reasons, the Trustee believes that the Proposed Letter of Request (**Exhibit A**) is just and appropriate and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Dated: New York, New York
June 18, 2021

Respectfully submitted,

/s/ Marco Molina

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